

Memorandum

Date : May 3, 2000

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To : William J. Keese, Chairman and Presiding Member File: May Status Report.Doc
Robert A. Laurie, Commissioner and Associate Member

From : California Energy Commission - Richard K. Buell
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Subject : THREE MOUNTAIN POWER PROJECT ~ Staff's May 2000 Status Report

The Three Mountain Power Project Committee's April 3, 2000 order ***Notice of Rescheduled Evidentiary Hearings and Procedures*** directed parties to file a status report in May 2000. This is staff's belated response to that order.

AIR QUALITY

On April 17, and 25, 2000, the applicant filed additional information with the Shasta County Air Quality Management District (District) in response to a request from the District. However, staff notes that the applicant has not yet provided requested information regarding the road paving emission offset proposal. That information includes: identification of roads to be paved, traffic counts on those roads, and silt content of road dust for those roads. In addition, the applicant and staff have not yet worked out the details of the wood stove replacement emission mitigation proposal. Staff expects the applicant to file the missing data in early May. Staff will also conduct a workshop on May 10 to discuss these issues and data needs. We expect that the District will be able to issue its Final Determination of Compliance shortly after the workshop. However, the U.S. Environmental Protection Agency (EPA) has indicated that the FDOC may not be deemed valid until EPA completes consultation with U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act (see biological resources below).

WATER RESOURCES

On March 17 and March 20, 2000, the applicant filed additional information regarding the water supply and water quality impacts. This information is currently under review by the staff and the Central Valley Regional Water Quality Control Board. Staff issued data requests regarding other water resource issues on May 1, 2000. Staff's preliminary review of the March filings indicates that the finding and conclusions are not adequately supported. Our concerns are similar to those raised by the intervenors in their recent data requests. Rather than issuing an additional round of data requests to address these problems staff has determined the most expeditious means of proceeding at this time is to conduct its own assessment of the water supply issues. Staff will conduct a workshop on May 10, 2000 to discuss these issues. Staff has not yet received the Central Valley Regional Water Quality Control Board's preliminary draft permit conditions. These permit conditions would normally be incorporated in staff's FSA analysis and conditions of certification. Based on discussions with the applicant, it now unclear when the draft permit conditions will be received from the Board. Therefore, it is uncertain whether staff will be able to provide a complete FSA for water resources by May 26, 2000. Staff and applicant should be able to provide clarification at the Prehearing Conference scheduled for May 15, 2000.

BIOLOGICAL RESOURCES

Staff's biological resources witness will not be available for the hearings on June 21, but will be available on June 22 and June 29. On May 1, 2000, staff issued additional data requests regarding biological resources.

The applicant has stated it intends to avoid all sensitive habitats and wildlife and plant species, and therefore, has concluded that consultation with U.S. Fish and Wildlife Service, California Department of Fish and Game, and U.S. Army Corps of Engineers is not warranted. Staff concurs that a permit from USACE is not required. However, neither USFWS nor CDFG have concluded that the project is not likely to adversely affect listed species. USFWS and staff believe a permit is required for potential take from bird collisions with the 60-mile long power line. In addition, staff, CDFG and USFWS do not believe the applicant's conclusions regarding potential impacts to the federally and state endangered Shasta crayfish are supported.

Because the U.S. Environmental Protection Agency will need to issue the applicant a PSD permit, EPA can initiate a Section 7 consultation with the USFWS. USFWS would then prepare a Biological Opinion for issuing that permit. This process requires the applicant/federal agency to submit a Biological Assessment with the request to initiate consultation. The process takes 135 days from the time the USFWS deems the information submitted is complete. Without initiation from a federal agency, the applicant would need to apply for an Incidental Take Permit under Section 10 of the Endangered Species Act. This process requires the applicant to prepare a Habitat Conservation Plan and the USFWS would prepare a Biological Opinion on the affects of that HCP and a NEPA analysis. The process to issue an Incidental Take Permit has no time limitations.

CDFG may require an Incidental Take Permit under Section 2080 of the California Endangered Species Act or can issue a consistency determination under 2080.1 if the Department determines that no further authorization or approval beyond the federal permit is necessary.

Staff had identified the need to obtain a Biological Opinion from USFWS in its FSA published on January 26, 2000, and has attended meetings with USFWS and the applicant where this requirement was identified. Staff is concerned that lack of progress on this issue, may not only jeopardize the staff Biological Resources FSA but also staff's Air Quality FSA. The applicant needs to identify its strategy for addressing these issues in the Prehearing Conference Statement due on May 11, 2000.

ALTERNATIVES

Staff has nothing new to report regarding its alternative analyses at this time.

RKB:rkb

cc: Three Mountain POS List
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CVRWQCB
USFWS
CDFG